

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Joseph Lee McFadden, # 346693,

Plaintiff,

v.

Jerry Gainey,

Defendant.

) C/A No. 4:12-1470-TLW-KDW

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ORDER

On August 1, 2012, Defendant Gainey appeared, through counsel and timely filed an Answer to Plaintiff's Complaint. ECF No. 18. Prior to Defendant's being served with Plaintiff's Summons and Complaint, Plaintiff filed a Motion for Summary Judgment. ECF No. 14 (Pl.'s Mot. for Summ. J. filed July 6, 2012); *see* ECF No. 17 (Def. served July 20, 2012).

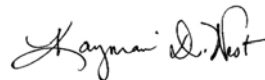
Defendant has not submitted a response to the pending Motion.

Review of the Motion discloses no certificate of service showing that Plaintiff mailed a copy of the Motion to Defendant at the same time that he submitted it to this court as he was directed to do in the Order Authorizing Service issued in this case on June 13, 2012. ECF No. 9. In that Order, Plaintiff was told that Rule 5 of the Federal Rules of Civil Procedure requires that "prior to Defendant's attorney making an appearance in this court, Plaintiff must serve Defendant with any documents Plaintiff files subsequent to the initial pleading and file a certificate of service that states who was served, what document was served, and how the document was served." In absence of proof that Plaintiff served the Motion on Defendant through personal mail, the pending Motion will be served on Defendant through the court's Electronic Case Filing System.

The Clerk of Court is directed to regenerate the Notice of Electronic Filing ("NEF") that was created upon the filing of Plaintiff's Motion for Summary Judgment, ECF No. 14, and send that NEF to counsel for Defendant. Thus, service of the Motion on Defendant is accomplished by serving counsel through the ECF system as stated in District of South Carolina, Electronic Case Filing Policies & Procedures § 11.2.1(a) (2006).

Defendant is hereby ordered to file a written response to Plaintiff's Motion for Summary Judgment no later than **September 5, 2012**.¹

IT IS SO ORDERED.



August 17, 2012
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge

¹By requiring that Defendant respond to Plaintiff's Motion, the court implies nothing regarding the relative merits of the Motion.